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FEDERAL ELECTION COMMISSION
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2004 JUN 21 A 11: 27

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

DATE COMPLAINT FILED: November 14, 2002
DATE OF NOTIFICATION: November 21, 2002
MUR 5333
DATE ACTIVATED: January 7, 2004

EXPIRATION OF STATUTE OF
LIMITATIONS: November 21, 2006

COMPLAINANT:

Scott Clayton

RESPONDENTS.

John Swallow for Congress and Stanley R. deWaal,
as treasurer
Dell Allen
Roger Barrus
W.R. Bradley
Evan Bybee
Nicail Bybee
Taige Bybee
Tamra Bybee
Danica M Campbell
Lavar Christensen
Fonda L. Eastman
Michael Ellis
Monica Ells
Brent Facer
Britta Lynn Facer
Corby Facer
Jillyn Facer
Rebecca Facer
Riley Todd Facer
Tyson Facer
James R. Fraser
Sharon E. Fraser
Bodee Gay
Dennis Gay
Gina Gay
Kim Gay

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John L. Harmer
Victor Iverson
Charlotte Jonas
W. James Jonas
Lenae Lichfield
Loni Lichfield
Lyndee Lichfield
Patricia Lichfield
Reagan Lichfield
Robbie Lichfield
Robert B. Lichfield
Roger Lichfield
Stephanie Lichfield
Tavia Lichfield
Larry H. Miller
Bradley D. Pelo
Melody A. Pelo
Mandi Robinson
Timothy V. Stay
Donna Swallow
Robert Whitman

RELEVANT STATUTES:

2 U.S.C. § 431(11)
2 U.S.C. § 434(b)(3)(A)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(3)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 441f
11 C.F.R. § 102.6(c)(3)
11 C.F.R. § 103.3(b)
11 C.F.R. § 103.3(b)(1)
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 110.1(b)(2)
11 C.F.R. § 110.1(b)(3)
11 C.F.R. § 110.1(b)(5)
11 C.F.R. § 110.1(e)
11 C.F.R. § 110.1(g)
11 C.F.R. § 110.1(i)(2)
11 C.F.R. § 110.1(k)(3)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that forty-six individuals made excessive contributions to John Swallow for Congress ("the Committee"). The complaint lists the individuals' purported total contributions to the Committee during the 2002 election cycle, most of which are \$2,000 or \$3,000. The complaint also alleges that ten of the named contributors were children in whose names contributions were made "in order to mislead and circumvent individual contribution limits." Complaint at page 3. No additional information is provided.

As an initial matter, the complaint appears to fail to take into account that during the 2002 election cycle a person could contribute up to \$1,000 to a candidate and her authorized committee *per election*. See 2 U.S.C. § 441a(a)(1)(A) (2002).¹ The Committee was the principal campaign committee for John Swallow, a candidate for the U.S. House of Representatives from the Second District of Utah. Mr. Swallow was a candidate in the 2002 primary election and the 2002 general election. In addition, Mr. Swallow was a candidate in a third election in 2002, the party convention held prior to the primary election. See Advisory Opinions 1978-30 and 1992-25 (in Utah, the party convention prior to the primary is considered a separate election with a separate contribution limit). Thus, a contributor could give up to a total of \$3,000 to the Committee in connection with the 2002 election cycle.

Forty of the forty-six contributors and the Committee responded to the complaint. The contributors' responses were in most cases nearly identical short letters stating that there are three election cycles in Utah and therefore the contributor could give a total of \$3,000 to the

¹ All of the relevant facts in these matters occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act, codified at 2 U.S.C. §§ 431 *et seq.*, or statements of law regarding provisions of the Act contained herein refer to the Act as it existed prior to the effective date of BCRA. Further, unless specifically noted to the contrary, any reference to Title 11 of the Code of Federal Regulations refers to the regulation as it existed prior to the implementation of BCRA, and as it appears in the 2002 edition of the Code of Federal Regulations.

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1 Committee.² The Committee's responses to the complaint addressed each contribution and in
2 many cases provided documents in support of its assertion that all the contributions in this matter
3 were permissible.³ The available information demonstrates that many of the alleged excessive
4 contributions are not in fact excessive. Accordingly, this Office recommends that the
5 Commission find no reason to believe regarding twenty-four individual respondent contributors
6 and dismiss four others.

7 The allegation that contributions were made through ten children, however, was not
8 adequately addressed in the responses. In fact, neither the alleged children nor the Committee
9 responded by identifying the age of any contributor. Because this issue was not addressed, we
10 asked respondents through counsel if they wanted to voluntarily clarify their responses, including
11 information as to whether the purported children were in fact children. Counsel provided the
12 ages of two such individuals, neither of whom were minors at the time of the contributions. The
13 available information shows that the eight other purported children, who all share the same last
14 name, made their contributions under circumstances suggesting that their contributions were
15 made with the funds of another person. This Office recommends reason to believe findings and
16 investigation of these contributions.

17 Finally, the information shows that the contributions of eight additional respondents were
18 made by limited liability companies and thus suggest excessive or corporate contributions. This
19 Office also recommends reason to believe findings and investigation of these contributions.

² Thirty-one respondents designated as counsel the counsel that has been designated by the Committee.

³ The Committee's initial response is dated December 20, 2002, which this Office received on December 23, 2002 ("Committee first response") The Committee filed a further response also dated December 20, 2002, which this Office received on January 10, 2003 ("Committee second response")

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II. FACTUAL AND LEGAL ANALYSIS

A. Contributions Within the Act's Limitations and Not Presenting Additional Issues

The contributors listed in the following chart made contributions within the Act's limits.

In a number of cases, the contributors initially designated an excessive amount to an election, but such excessives were timely redesignated to other elections or reattributed to other contributors.⁴

The "Total" field indicates the amount of contributions the individual made to the Committee during the 2002 election cycle.⁵ The contributor's original designations are set forth in "Initial Designation" field, and, where corrective action was necessary, that action is identified in the "Corrective Action" field.

Contributor	Total ⁶	Initial Designation	Corrective Action
Dell Allen	\$3,000	\$3,000 for convention	Timely redesignation of \$1,000 for primary and \$1,000 for general
Roger Barrus	\$1,300	\$1,000 for convention; \$200 for primary; \$100 for general	—
W.R. Bradley	\$2,000	\$1,000 for convention; \$1,000 for general	—

⁴ No committee shall knowingly accept any contribution in violation of the provisions of section 441a, including the \$1,000 per election contribution limit at section 441a(a)(1)(A). 2 U.S.C. § 441a(f). The treasurer of a political committee is responsible for examining all contributions received for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations prescribed by the Act. 11 C.F.R. § 103.3(b)(3). Contributions that exceed the limits prescribed by the Act can be either returned to the contributor or deposited. *Id.* In the event the excessive contribution is deposited, the treasurer may request a reattribution or redesignation of the contribution by the contributor. *Id.* If a written reattribution or redesignation of the contribution is not obtained from the contributor, then the treasurer shall refund the contribution to the contributor within 60 days. *Id.*; see 11 C.F.R. § 110.1(b)(5) (redesignation) and (k)(3) (reattribution).

A contribution designated by contributor for a particular election counts against the contributor's limit for that designated election. 11 C.F.R. § 110.1(b)(2)(i). Finally, a contribution not designated by a contributor to a particular election is considered to be in connection with the next election for that candidate after the contribution is made. *Id.* at section 110.1(b)(2)(ii).

⁵ In cases where the contributor reattributed a portion of her contribution, or had a portion of another individual's contribution reattributed to her, the field shows both the initial and final totals.

⁶ In a few cases, the Committee's disclosure reports showed contributions in addition to the total set forth in the complaint.

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Danica M. Campbell	\$2,000	\$1,000 for convention; \$1,000 for general	—
Lavar Christensen	\$4,000/ \$2,000	\$2,000 for convention; \$2,000 for primary	Timely reattribution to Susan Christensen of \$1,000 for convention and \$1,000 for primary
Fonda L. Eastman	\$4,500/ \$2,000	\$2,000 for convention; \$2,500 for general	Timely reattribution to Vaughn Eastman of \$1,000 for convention, \$1,000 for general, and \$500 for primary
Michael Ellis	\$2,000	\$1,000 for convention; \$1,000 for general	—
Monica Ellis	\$2,000	\$1,000 for convention; \$1,000 for general	—
Corby Facer	\$3,000	\$1,000 for convention; \$1,000 for primary; \$1,000 for general	—
Jillyn Facer	\$3,000	\$1,000 for convention; \$1,000 for primary; \$1,000 for general	—
Rebecca Facer	\$3,000	\$1,000 for convention; \$1,000 for primary; \$1,000 for general	—
James R. Fraser	\$5,000/ \$3,000	\$2,000 for convention; \$2,000 for primary; \$1,000 for general	Timely reattribution to Sharon Fraser of \$1,000 for convention and \$1,000 for primary ⁷
Sharon E. Fraser	\$1,000/ \$3,000	\$1,000 for general	—
John L. Harmer	\$2,000	\$1,000 for convention; \$1,000 for general	—
Victor Iverson	\$2,000/ \$1,000	\$2,000 for convention	Timely reattribution to Audrey Iverson of \$1,000 for convention
Larry H. Miller ⁸	\$2,000	\$1,000 for convention; \$1,000 for general	—

⁷ Regarding the contributions designated for the convention and primary, James Fraser initially wrote two \$2,000 checks to the Committee, one of which contained a memo line attributing the contributions to himself, the other of which contained a memo line attributing the contributions to Sharon Fraser, whose name was also imprinted on the checks. On a reattribution form signed by both Frasers, Mr. Fraser wrote that one of the \$2,000 checks was intended to be from Sharon Fraser. The reattribution figure written in the dollar field on the form, however, was only \$1,000. See Committee first response, page 6 and tabs 20-21. However, because the form did specify the intent to reattribute \$2,000 and was signed by both James Fraser and Sharon Fraser, this Office is satisfied with the larger reattribution. Even if the information did not indicate the Frasers' intent to reattribute \$2,000, the retroactive application of the presumptive reattribution would effectively do so. See 11 C.F.R. § 110.1(k)(3) (2003).

⁸ In his response to the complaint, Mr. Miller claimed that he was wrongly notified, but acknowledged contributing \$2,000 to the Committee. The complaint listed "Larry E. Miller" of San Diego, CA as a \$2,000 donor to the Committee. The only "Larry Miller" listed in the Commission's contributor index as giving to the Committee

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Bradley D. Pelo	\$4,000/ \$3,000	\$2,000 for convention; \$1,000 for primary; \$1,000 for general	Timely reattribution to Melody A. Pelo of \$1,000 for convention
Melody A. Pelo	\$2,000/ \$3,000	\$1,000 for primary; \$1,000 for general	—
Mandi Robinson	\$3,000	\$1,000 for convention; \$1,000 for primary; \$1,000 for general	—
Timothy V. Stay	\$3,000/ \$2,000	\$2,000 for convention; \$1,000 for general	Timely reattribution to Dalita Stay of \$1,000 for convention
Robert Whitman	\$2,000/ \$1,000	\$2,000 for primary	Timely reattribution to Wendy Whitman of \$1,000 for primary

Thus, this Office recommends that the Commission find no reason to believe any of the respondents in the above chart violated 2 U.S.C. § 441a(a)(1)(A) and close the file as to these individuals. In addition, this Office recommends that the Commission find no reason to believe that John Swallow for Congress and Stanley R. deWaal, as treasurer, violated 2 U.S.C. § 441a(f) in connection with these contributions.

B. Excessive Contribution

Donna Swallow contributed \$400 on December 20, 2001 and \$2,000 on December 26, 2001, all designated for the convention. On January 6, 2002, Ms. Swallow reattributed \$1,000 of her \$2,000 contribution to her spouse, Richard Swallow, as indicated on a form signed by both individuals. Committee first response at tab 45. The Committee made no mention in its responses of the other \$400. In response to an RFAI from RAD questioning Donna Swallow's \$2,400 contribution, the Committee by letter dated April 22, 2002 stated that Ms. Swallow had reattributed \$1,000 to her spouse and \$400 to her son, James Swallow, and that the Committee had "timely letters on file that show that funds were paid from the individual's own funds." The Committee did not include a copy of any letter regarding the \$400. As a result, the available

¹⁵ Larry H. Miller of Sandy, Utah; Larry E Miller of San Diego contributed to other committees. Thus, this Office sent the complaint notification to the address of Larry H Miller

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1 information does not show how Donna Swallow could have permissibly reattributed the \$400 to
2 James Swallow. Not only has the Commission seen no documentation containing James
3 Swallow's signature, but there is no information establishing that the contribution was drawn on
4 an account shared by the two individuals. In light of the small amount, however, this Office does
5 not recommend pursuing this contribution. Accordingly, this Office recommends that the
6 Commission dismiss the complaint and close the file with respect to Donna Swallow and dismiss
7 the complaint with respect to the Committee in connection with the contributions from Donna
8 Swallow.

9 **C. Contributions Relating to Net Debts Outstanding from an Election**

10
11 Charlotte Jonas contributed \$2,000 to the Committee on June 18, 2002, \$1,000
12 designated for the May 11, 2002 convention and \$1,000 designated for the June 25, 2002
13 primary election. W. James Jonas contributed \$3,000 to the Committee on June 18, 2002,
14 \$1,000 designated for each of the convention, primary and general elections. Thus, both
15 individuals contributed in connection with the convention after that election had taken place.
16 Such contributions could only be made, however, to the extent the contributions do not exceed
17 the Committee's net debts outstanding from the convention. *See* 11 C.F.R. § 110.1(b)(3)(i). Net
18 debts outstanding is calculated as of the date of the convention, and consists of unpaid debts with
19 respect to the convention minus cash on hand. *See* 11 C.F.R. § 110.1(b)(3)(ii). For the purpose
20 of calculating net debts outstanding for the convention, cash on hand need not include
21 contributions designated for the primary or general elections. *See id.*; *Campaign Guide for*
22 *Congressional Candidates and Committees* (2002), page 16. Finally, the amount of net debts
23 outstanding shall be adjusted as additional funds are received and expenditures are made. *See*
24 11 C.F.R. § 110.1(b)(3)(iii).

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1 The Committee provided a table purporting to show that it had net debts outstanding.
2 Committee first response, tabs 28 and 29. This table purports to show \$5,024.35 in convention
3 debt as of October 14, 2002. The table shows \$44,396.25 in cash on hand as of the date of the
4 convention, subtracts \$33,500 in "restricted funds as of 5/11/02," subtracts \$38,778.93 in "debts
5 per schedule," and, finally, adds \$22,858.33 in "retirement collected to date."⁹ Charlotte Jonas
6 and W. James Jonas stated in their responses to the complaint their "understanding from the John
7 Swallow campaign that Mr. Swallow was carrying a debt throughout all election cycles."

8 The available information, however, does not show with any certainty that the Committee
9 in fact had net debts outstanding. First, the Committee's net debts outstanding calculation
10 appears to be backward, starting with cash on hand and then subtracting "restricted funds," and
11 debts. The Commission's regulations provide that the calculation begins with the amount of
12 unpaid debts, from which cash on hand is subtracted. *See* 11 C.F.R. § 110.1(b)(3)(ii). Second,
13 the Committee's calculation as of October 14, 2002 is not applicable where the contributions at
14 issue were made in June 2002. *See* 11 C.F.R. § 110.1(b)(3)(iii). Third, the Committee's figure
15 of \$38,778.93 in "debts per schedule" does not clearly relate to the Committee's disclosure
16 reports. The Committee's amended Pre-convention report, covering April 1, 2002 through
17 April 21, 2002, disclosed zero debts. The Committee's amended Pre-primary report, covering
18 April 22, 2002 through June 5, 2002, disclosed \$54,171.67 in debts, although \$50,000 of that
19 figure, a loan from the candidate, was incurred on June 5, 2002 – several weeks after the May 11,
20 2002 convention – and is designated for the primary election on Schedule C. Thus, the source of
21 the Committee's asserted \$38,778.93 in debts is not clear, and so it is not clear if the Committee
22 had net debts outstanding from the convention at the time of the Jonas contributions.

⁹ This final item presumably includes the contributions by Charlotte Jonas and W. James Jonas designated for the convention.

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1 In the event that there were no net debts – or insufficient debts – outstanding from the
2 convention, the \$1,000 contributions from Charlotte Jonas and W. James Jonas designated for
3 the convention would instead be designated for the primary election. *See* 11 C.F.R.
4 § 110.1(b)(2)(ii). Such designation would constitute excessive contributions on the part of each
5 Jonas, both of whom had already contributed \$1,000 for the primary. *See* 2 U.S.C.
6 § 441a(a)(1)(A).

7 However, this Office does not believe that it is worth the resources to investigate the net
8 debts outstanding issue, in light of the relatively small amount of contributions involved, none of
9 which was excessive by so much that this Office would recommend pursuing the contributors.¹⁰
10 Further, in light of the net debts outstanding uncertainty, this Office does not recommend
11 pursuing the Committee for the receipt of these contributions. Accordingly, this Office
12 recommends that the Commission dismiss the complaint and close the file with respect to
13 Charlotte Jonas and W. James Jonas and dismiss the complaint with respect to the Committee in
14 connection with the contributions from these two individuals.

15 **D. Contributions in the Names of Others and Minors' Contributions**

16
17 **1. Complaint and responses**

18 The complaint alleges that ten individuals with the last name "Lichfield" made excessive
19 contributions to the Committee. The complaint listed each Lichfield as contributing \$3,000 to
20 the Committee. The Committee disclosed the receipt of \$3,000 from each Lichfield on
21 January 23, 2002. In each case \$1,000 was designated for each of the convention, primary and
22 general elections. Therefore, these contributions on their face are within the limits of 2 U.S.C.

1 § 441a(a)(1)(A). The complaint also alleges that eight of the Lichfields were children in whose
2 names contributions were made.

3 The Committee's response includes copies of ten \$3,000 "official check[s]" (resembling
4 money orders or cashier's checks) dated January 19, 2002. Each identifies "Robert Browning
5 Lichfield" as "purchaser." Committee first response, pages 9-10 and tabs 30-39. This is
6 presumably Robert B. Lichfield, who is named as a respondent. Each of the checks contains
7 similar handwriting naming a Lichfield contributor, e.g., "from: Lori Lichfield." On the
8 "Purchaser Copy"¹¹ of each check is a notation designating \$1,000 apiece for each of the three
9 elections.¹²

10 The Committee also provided a letter from its treasurer addressed to Robert B. Lichfield
11 dated March 15, 2002. After thanking Mr. Lichfield for the contribution, the letter said:

12 The strict laws of the Federal Election Commission state that no one can make a
13 contribution on behalf of someone else. However, the check was drawn on only one
14 account. Please confirm to us in writing that the \$3,000 contribution was from your
15 personal funds.

16
17 The letter provides fields for each Lichfield's signature and date. The completed fields contain
18 the signatures of all ten Lichfields dated March 20, 2002. Committee first response, tabs 30-39.

19 The ten Lichfield respondents submitted identical responses to the complaint, each one
20 stating a belief that they had followed "the regulations of the FEC" in contributing \$1,000 for
21 each of the three elections involving John Swallow.¹³ The responses also state that the Swallow
22 campaign assured them, before the contributions, "that this would be within the regulations of

¹¹ The Purchaser Copy closely resembles the check itself and appears to serve as a receipt

¹² The Purchaser Copy of each check also contains a hand-written term that appears to be the occupation of the contributor. "student" (four individuals), "housewife" (three), "self-employed" (two) and "consultant" (one). We note that these occupations do not exactly match the occupations of these contributors as disclosed by the Committee. See *infra*

¹³ The Lichfield responses are undated and were received on December 16, 2002 and December 23, 2002.

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1 the FEC.” Finally, the Lichfield responses all designated as counsel the same counsel that had
2 been designated by the Committee. Attached to each Lichfield response was a “Receipt
3 Transaction List,” apparently from a Committee database, that listed the contributor’s
4 contributions as \$1,000 for each of the convention, primary and general elections.

5 **2. Analysis of contributions**
6

7 It appears from the official checks that Robert B. Lichfield paid for all \$30,000 of the
8 Lichfield contributions. Each of the ten Lichfields made their \$3,000 in contributions to the
9 Committee through a \$3,000 official check listing Robert Browning Lichfield as the purchaser.
10 Aside from Mr. Lichfield’s own contribution, there is no indication on the face of these
11 instruments that the funds are in fact those of the named contributor. The only relation these
12 official checks appear to have to the named contributors is the handwriting naming a Lichfield
13 contributor, e.g., “from: Lori Lichfield.” Finally, that handwriting on all ten checks appears to
14 be that of the same person.

15 Paying for the contributions of others is prohibited by the Act, as is knowingly permitting
16 one’s name to be used to effect such a contribution, and knowingly accepting such a
17 contribution. *See* 2 U.S.C. § 441f. Further, the Act not only limits an individual’s contributions
18 to candidate committees to \$1,000 per election, it also limits an individual’s overall contributions
19 to \$25,000 in any calendar year. *See* 2 U.S.C. § 441a(a)(1)(A) and 441a(a)(3).

20 Although the Committee has provided a statement apparently signed by all ten Lichfield
21 contributors that the contributions were made from their personal funds, neither the Committee’s
22 response nor those of the Lichfields explain or document how each Lichfield could have
23 contributed \$3,000 of their own funds if the official checks were all purchased by Robert B.
24 Lichfield. Nor do the responses describe the source of funds used by Mr. Lichfield to purchase

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1 the official checks. Thus, the available information indicates that Robert B. Lichfield may have
2 made contributions in the names of the other nine Lichfields, namely, Lenae Lichfield, Loni
3 Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger
4 Lichfield, Stephanie Lichfield and Tavia Lichfield. *See* 2 U.S.C. § 441f. In addition, these other
5 nine Lichfields may have permitted their names to be used to effect such contributions. *See id.*

6 The possibility that Robert B. Lichfield paid for all \$30,000 of the Lichfield contributions
7 is consistent with the complaint's allegation that contributions were made in the names of eight
8 Lichfield "children." Despite this allegation in the complaint, neither the Committee's response
9 nor those of the Lichfields identify the ages of the Lichfields,¹⁴ much less address whether any
10 contributions by Lichfields under 18 were knowing and voluntary or whether they were "made
11 from the proceeds of a gift, the purpose of which was to provide funds to be contributed." *See*
12 11 C.F.R. § 110.1(i)(2)(i) and (iii). The contributions here were made with "official checks";
13 each Lichfield contributor had the same address; none of the alleged Lichfield children made any
14 other contributions during the 2002 election cycle or any previous cycle, according to the
15 Commission's contributor index; the contributions were all made on the same date as those by
16 Robert B. Lichfield, who contributed the maximum amount permissible to the Committee; and
17 the Committee disclosed the occupation of five of the eight purported Lichfield children as
18 "student."¹⁵ All of these circumstances are often associated with contributions made through
19 minors. *See* MURs 5335R (Davis for Congress), 4484 (Bainum), 4255 (Hitchcock), 4254
20 (Hershey), 4253 (Croopnick), 4252 (Baxter), 3268 (St. Germain).

¹⁴ As noted above, this Office informally asked respondents through counsel if they wanted to voluntarily clarify their responses, including information as to whether the purported children were in fact children. To date counsel has not identified the ages of the eight purported Lichfield children.

¹⁵ The Committee disclosed the three remaining purported Lichfield children as self-employed consultants (two) and housewife (one).

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1 In short, the facts indicate that Robert B. Lichfield may have made contributions in the
2 names of others in violation of 2 U.S.C. § 441f. They also indicate that he may have exceeded
3 both the \$1,000 individual per-election contribution limit and the overall annual \$25,000
4 contribution limit.¹⁶ See 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3). In addition, the nine other
5 Lichfields may have knowingly permitted their names to be used to effect Robert Lichfield's
6 contributions on their behalf. See 2 U.S.C. § 441f. Further, to the extent some or all of the eight
7 alleged Lichfield children were minors, even if their contributions were not made by Robert
8 Lichfield, their contributions could still be attributable to him if the contributions were not made
9 knowingly and voluntarily by the minors. See 11 C.F.R. § 110.1(i)(2); MUR 5335R (Davis for
10 Congress); MUR 4255 (Hitchcock). Finally, there is a possibility that Robert Lichfield's actions
11 constituted knowing and willful violations of the Act.¹⁷ The use of official checks is consistent
12 with an intention to disguise minors' status. See MUR 5335R (Davis for Congress). Generally,
13 the inherently deceptive nature of conduit arrangements merits an investigation into whether
14 conduct was knowing and willful.

¹⁶ The public record does not indicate any federal contributions made by Mr. Lichfield during the 2002 election cycle apart from his \$3,000 contribution to the Committee. The public record does show a Robert B. Lichfield – with an address within Utah different than that of the contributor to the Committee – donating a total of \$25,000 to the non-federal account of the RNC National State Election Committee during 2001 and again in 2002 and donating \$100,000 to the 2001 President's Dinner Non-Federal Account in 2001.

¹⁷ The phrase “knowing and willful” indicates that “actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law” 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); see also *Fed. Election Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between “knowing” and “knowing and willful”). A knowing and willful violation may be established “by proof that the defendant acted deliberately and with knowledge” that an action was unlawful *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of a knowing and willful violation could be drawn “from the defendants’ elaborate scheme for disguising their . . . political contributions . . .” *Id.* at 214–15. The court also found that the evidence did not have to show that a defendant “had specific knowledge of the regulations” or “conclusively demonstrate” a defendant’s “state of mind,” if there were “facts and circumstances from which the jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal.” *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), cert. denied, 439 U.S. 838 (1989)).

1 We therefore recommend that the Commission find reason to believe that Robert B.
2 Lichfield knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3) and 441f. This
3 Office also recommends that the Commission find reason to believe that Lenae Lichfield, Loni
4 Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger
5 Lichfield, Stephanie Lichfield and Tavia Lichfield violated 2 U.S.C. § 441f.¹⁸

6 We recommend that the Commission take no action at this time regarding the Committee
7 in connection with the Lichfield contributions. In reaction to receiving \$30,000 in official
8 checks purchased by Robert Lichfield and attributed to ten Lichfields, the Committee asked the
9 Lichfields whether the contributions were made with their personal funds. *See* 11 C.F.R.
10 § 103.3(b) (committee treasurers shall be responsible for examining all contributions received for
11 evidence of illegality and for ascertaining whether contributions received, when aggregated with
12 other contributions from the same individual, exceed the contribution limitations.) The
13 Committee may thus have facially complied with section 103.3(b) regarding the appearance of
14 contributions made in the names of others. The allegation regarding minors, however, raises
15 additional questions. Each Lichfield responded to the complaint that “[t]he John Swallow
16 campaign assured me before I donated, that [the contributions] would be within the regulations
17 of the FEC.” Thus, the Lichfields assert that they were in contact with the Committee prior to
18 their contributions. The Committee’s response to the complaint did not address the ages of the
19 contributors, leaving open the question of whether the Committee had more knowledge of these
20 contributors and their contributions. After investigation on the contributor side, this Office will

¹⁸ At the moment, it does not appear that any of these nine Lichfield respondents made excessive contributions. However, because the investigation could conceivably produce evidence that one or more of these respondents provided the funds used to make other respondents’ contributions, we recommend that the Commission take no action at this time with respect to these respondents regarding the allegation that they violated 2 U.S.C. § 441a(a)(1)(A).

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1 make substantive recommendations regarding the Committee's receipt of the Lichfield
2 contributions.

3 **E. Limited Liability Company Contributions**

4
5 **1. Complaint and responses**

6 The complaint alleges that four individuals with the last name "Bybee" and four
7 individuals with the last name "Gay" made excessive contributions to the Committee. The
8 complaint listed each of these individuals as contributing \$2,000 to the Committee. The
9 Committee disclosed the receipt from each Bybee of \$1,000, which was designated for the
10 May 11, 2002 convention, on March 31, 2002, and another \$1,000, which was designated for the
11 June 25, 2002 primary election, on June 26, 2002.¹⁹ The Committee disclosed the receipt from
12 each Gay of \$1,000, which was designated for the convention, on March 31, 2002, and \$1,000
13 which was designated for the general election, on June 28, 2002. As reported on the
14 Committee's disclosure reports, therefore, these contributions are within the limits of 2 U.S.C.
15 § 441a(a)(1)(A).

16 The Bybee and Gay contributions were made by checks drawn on accounts of Winterfox,
17 LLC ("Winterfox") and Winterhawk Enterprises ("Winterhawk") and attributed to the several
18 Bybee and Gay contributors, as set forth in the chart below. *See* Committee first response, pages
19 3-4, 7-8 and tabs 4-7 and 22-25. Winterfox and Winterhawk are limited liability companies
20 ("LLCs") identified in public records as active LLCs organized in Utah.²⁰

¹⁹ Contributions designated for the primary *after* that election could only be so designated to the extent the contributions did not exceed the Committee's net debts outstanding from that election. *See* 11 C.F.R. § 110.1(b)(3)(i). Unlike the convention, for which there is a question whether there were net debts outstanding, *see* discussion *supra*, there appear to have been net debts outstanding from the primary election. The Committee's July Quarterly Report covering through June 30, 2002 disclosed \$29,621 ending cash on hand and \$67,732 in debts

²⁰ Winterhawk is listed in public records as Winterhawk Enterprises, LLC.

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Check drawn on account	Check date	Amount	Attributed persons (\$1,000 each)
Winterfox, LLC	3/28/02	\$5,000	Evan Bybee, Tamra Bybee, Taige Bybee, Kara Davis, Nicaïl Bybee
Winterfox, LLC	6/28/02	\$5,000	Evan Bybee, Tamra Bybee, Taige Bybee, Nicaïl Bybee, Brenn Bybee
Winterhawk Enterprises	3/29/02	\$4,000	Dennis Gay, Gina Gay, Bodee Gay, Kim Gay
Winterhawk Enterprises	6/21/02	\$5,000	Dennis Gay, Gina Gay, Bodee Gay, Kim Gay, Haley Gay

1
2 In the first instance, Winterfox wrote a \$5,000 check to the Committee dated March 28,
3 2002, signed by Evan Bybee, with a memo line reading "From Evan, Tamra, Taige, Kara, Nicaïl
4 \$1000 ea," i.e., the four Bybee respondents and Kara Davis, who is not a respondent. The
5 Committee provided a copy of a letter its treasurer sent to Winterfox, dated April 4, 2002,
6 expressing thanks for the contribution and then stating:

7 The strict Federal Election Commission regulations [prohibit] making contributions on
8 behalf of someone else to federal election campaigns. We must refund this money to you
9 within thirty (30) days unless you can establish in writing that the contribution came from
10 personal funds of a corporate drawing account, such as a draw against salary, wages,
11 dividends, etc. Please confirm that such was indeed the case with this check by signing
12 below....
13

14 The letter provides fields for the signature, occupation, employer and date of each Bybee and of
15 Kara Davis. The completed fields contain signatures, occupations and employers for all five
16 individuals dated April 10 and 11, 2002. Committee first response, tabs 4-7. One of the five,
17 Tamra Bybee, listed Winterfox as her employer; Taige Bybee and Nicaïl Bybee listed other
18 entities; and Evan Bybee and Kara Davis listed "self." The Committee did not disclose
19 Winterfox as the employer of any of the five individuals.

20 In the second instance, Winterfox wrote a \$5,000 check to the Committee dated June 28,
21 2002, that was signed by Evan Bybee and contained a memo line reading "1,000 ea Evan, Tamra
22 Bybee, Taige Bybee, Nicaïl Bybee, Brenn Bybee," i.e., the four Bybee respondents and Brenn

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1 Bybee, who is not a respondent. Committee first response at tabs 4-7. The Committee's
2 responses did not contain a copy of any letter regarding the June 28, 2002 Winterfox check. The
3 four Bybee contributors did not respond to the complaint.

4 Regarding the Gay contributions, Winterhawk wrote a \$4,000 check to the Committee
5 dated March 29, 2002. The signature on the check appears to be that of Dennis Gay and the
6 memo line reads "Dennis, Gina, Bodee, Kim Campaign Donation." The Committee provided a
7 copy of a letter that the Committee sent to Winterhawk containing the same request as in the
8 letter to Winterfox quoted above, informing Winterfox that the contribution would have to be
9 refunded unless it was established in writing that the contribution came from "personal funds of
10 a corporate drawing account." The Committee's letter, dated March 31, 2002, provides fields for
11 the signature, occupation, employer and date of each Gay. The completed fields contain the
12 signatures of all four individuals dated April 10, 2002, and identify "Majestic ent,"²¹ as the
13 employer of all four individuals.²² Committee first response, tabs 22-25.

14 Finally, Winterhawk wrote a \$5,000 check to the Committee on June 21, 2002. The
15 signature on the check appears to be that of Dennis Gay and the memo line reads "Dennis, Gina,
16 Bodee, Kim, Haley Campaign Dona" [sic]. The Committee provided a copy of an undated letter
17 to Winterhawk regarding the contribution, identical to its March 31, 2002 letter to Winterhawk.
18 The Committee's undated letter makes no mention of Haley Gay, the fifth attributed contributor,
19 who is not a respondent in this matter. The completed fields contain the signatures of the four

²¹ Utah state records indicate three business entities whose names start with "Majestic ent," all of which are expired Nevada state records list "Majestic Media Holdings, Inc.," with Gina Gay as president and Dennis Gay as secretary and treasurer

²² The Committee's disclosure report identified Winterhawk as the employer of all four individuals.

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Gay contributors, with dates ranging from September 20 to September 25, 2002, and identify "Majestic" as the employer of three individuals.²³ Committee first response, tabs 22-25.

The four Gay respondents, Dennis, Gina, Bodee, and Kim, submitted identical responses to the complaint, each one stating a belief that they had "followed the regulations of the FEC" and were allowed to contribute \$1,000 for each of the three elections involving John Swallow.²⁴ Attached to each Gay response was a "Receipt Transaction List," apparently from a Committee database, that listed the contributor's contributions as \$1,000 for the convention and general elections.²⁵

2. Law on contributions by LLCs, corporations and partnerships

The Commission's regulations establish two possible treatments for contributions by business entities that are recognized as limited liability companies under the laws of the State in which they are established. 11 C.F.R. § 110.1(g)(1). The treatment depends on how the firm elects to file with the Internal Revenue Service ("IRS"). *Id.* at 110.1(g)(2). If the contribution is from an LLC filing with the IRS as a partnership pursuant to 26 C.F.R. § 301.7701-3, or from one that fails to make an election, it shall be treated as a contribution from a partnership pursuant to 11 C.F.R. § 110.1(e). *Id.* If the contribution is from an LLC electing to file with the IRS as a corporation, the contribution is prohibited. 2 U.S.C. § 441b(a) and 11 C.F.R. § 110.1(g)(3). An LLC that makes a contribution pursuant to this provision shall, at the time it makes the

²³ The employer field is blank for the fourth individual, Dennis Gay. The Committee disclosed Winterhawk as the employer of all four individuals.

²⁴ The Gay responses are undated and were received on December 23, 2002.

²⁵ Haley Gay, the non-respondent noted above as one of the individuals to whom the June 21, 2002 Winterhawk check was attributed, filed a response to the complaint identical to those of the four Gay respondents. The Committee disclosed no other contributions from Haley Gay, although the "Receipt Transaction List" provided in Haley Gay's response includes a second \$1,000 contribution. Another non-respondent, Buck Gay, also filed an identical response to the complaint. The Committee disclosed no contributions from Buck Gay, although the "Receipt Transaction List" provided in Buck Gay's response includes two \$1,000 contributions.

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1 contribution, provide information to the recipient committee as to how the contribution is to be
2 attributed, and affirm to the recipient committee that it is eligible to make the contribution.
3 11 C.F.R. § 110.1(g)(5).

4 The Act prohibits corporations from making contributions in connection with any
5 election and prohibits any candidate or political committee from knowingly accepting or
6 receiving any such contributions. 2 U.S.C. § 441b(a). In addition, section 441b(a) prohibits any
7 officer or director of any corporation from consenting to any contribution by the corporation.
8 The Commission has recognized, however, limited circumstances in which a corporate employee
9 may make a contribution drawn on a corporate account, specifically, a nonrepayable corporate
10 drawing account established to permit an employee to draw against her salary, profits or other
11 compensation. *See Campaign Guide for Congressional Candidates and Committees* (2002),
12 page 21;²⁶ *FEC Record*, September 1978, page 1.²⁷ Contributions may not be made from the
13 general treasury fund of corporations. *See* 2 U.S.C. § 441b(a); *cf. FEC v. Massachusetts Citizens*
14 *for Life*, 479 U.S. 238, 241 (1986).

15 A contribution by a partnership shall be attributed to the partnership and to each partner
16 in one of two ways: 1) in proportion to his or her share of the profits, according to instructions
17 which shall be provided by the partnership to the political committee or candidate; or 2) by
18 agreement of the partners, as long as only the profits of the partners to whom the contribution is
19 attributed are reduced (or losses increased), and these partners' profits are reduced (or losses

²⁶ The May 2004 *Campaign Guide for Congressional Candidates and Committees* does not contain any reference to nonrepayable corporate drawing accounts.

²⁷ The only place in the Act or the Commission's regulations that specifically addresses the making of contributions through nonrepayable corporate drawing accounts is in the context of contributions to separate segregated funds. *See* 11 C.F.R. § 102.6(c)(3). This regulation provides that a contributor may write a check that represents both a contribution and payment of dues or other fees that must be drawn on the contributor's personal checking account or on a "non-repayable corporate drawing account of the individual contributor." *Id.* *See also* Explanation and Justification, 48 Fed. Reg. 26,297 (June 7, 1983).

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increased) in proportion to the contribution attributed to each of them. 11 C.F.R. § 110.1(e). A contribution by a partnership shall not exceed the Act's limitations on contributions, and no portion of such contribution may be made from the profits of a corporation that is a partner. *Id.*

3. Analysis of contributions

Winterfox and Winterhawk, LLCs, wrote \$19,000 in contribution checks to the Committee. They attributed these amounts to the individuals noted above. No contributions were attributed to the LLCs themselves. The threshold question regarding LLC contributions is whether the LLC is to be treated as a corporation or as a partnership, which depends on whether the LLC elected federal income tax treatment as a corporation. *See* 11 C.F.R. § 110.1(g). The available information does not indicate whether Winterfox and Winterhawk elected tax treatment as corporations, as none of the responses to the complaint addressed the fact that either entity is an LLC.

The LLC checks on their face attribute the contributions among several individuals, but it does not appear that the LLCs affirmed to the Committee that they are eligible as entities to make the contributions in the first place. *See* 11 C.F.R. § 110.1(g)(5). Instead, the Committee's letters in response to three of the four LLC contribution checks invite the attributed individual contributors to categorize the contributions as coming from "personal funds of a corporate drawing account, such as a draw against salary, wages, dividends, etc." Each individual contributor appeared to agree with this categorization by signing in the space provided. While the Commission permits contributions from corporate employees drawn on nonrepayable corporate drawing accounts, *see supra*, the contributions here do not appear to be drawn on such accounts. First, the checks appear to be drawn on the general treasury accounts of the LLCs; no account name is indicated on the checks relating to a possible nonrepayable drawing account.

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1 Second, the attributed individual contributors may not even be employees of the LLCs. As noted
2 above, only a single attributed contributor listed the corresponding LLC as her employer.
3 Interestingly, in the case of the Winterhawk contribution checks, none of the attributed
4 contributors listed Winterhawk as their employer, but the Committee disclosed Winterhawk as
5 the employer of all four individuals.

6 Thus, if the LLCs have elected federal income tax treatment as a corporation, these LLC
7 contribution checks may constitute impermissible corporate contributions. This Office
8 recommends that the Commission find reason to believe that Winterfox, LLC and Winterhawk
9 Enterprises, LLC each violated 2 U.S.C. § 441b(a). In addition, we recommend that the
10 Commission find reason to believe that Evan Bybee and Dennis Gay, the individuals who signed
11 the LLC checks and appear in public records as both members and managers of Winterfox and
12 Winterhawk, respectively, violated 2 U.S.C. § 441b(a) for consenting to corporate contributions.

13 If, in the alternative, the LLCs are treated as partnerships, their checks to the Committee
14 constitute contributions from the LLCs themselves as well as from the "partners" of the LLCs.
15 See 11 C.F.R. § 110.1(e).²⁸ Thus, Winterfox, LLC, in writing two checks to the Committee in
16 the amount of \$5,000, contributed \$10,000 to the Committee in connection with the convention
17 and primary elections, well in excess of the statutory limit. Similarly, Winterhawk, in writing
18 checks to the Committee in the amounts of \$4,000 and \$5,000, contributed \$9,000 to the
19 Committee in connection with the convention and general elections, also in excess of the
20 statutory limit. This Office recommends that the Commission find reason to believe Winterfox,
21 LLC, and Winterhawk Enterprises, LLC each violated 2 U.S.C. § 441a(a)(1)(A).

²⁸ Persons with an ownership interest in an LLC are called "members" rather than "partners." See Utah Revised Limited Liability Company Act, Utah Code Ann. § 48-2c-102(14)

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1 As for the “partners” of these LLCs, public records from Utah identify G. Evan Bybee
2 and Taige Bybee as members of Winterfox, and Dennis Gay and Gina Gay as members of
3 Winterhawk. By analogy, these members may be the “partners” to which the LLC contributions
4 may be attributed if the LLCs are treated as partnerships. *See* 11 C.F.R. § 110.1(e) (such
5 attribution shall be in proportion to each partner’s share of the profits, or, by agreement of the
6 partners, as long as only the profits of the partners to whom the contribution is attributed are
7 reduced and these partners’ profits are reduced in proportion to the contribution attributed to
8 each of them). Attributing the LLC contributions among the members/partners appears to result
9 in excessive contributions on the part of those individuals. Winterfox’s \$10,000 in contributions
10 is attributed \$5,000 each to Evan Bybee and Taige Bybee, and Winterhawk’s \$9,000 in
11 contributions is attributed \$4,500 each to Dennis Gay and Gina Gay. Thus, this Office
12 recommends that the Commission find reason to believe that Evan Bybee, Taige Bybee, Dennis
13 Gay and Gina Gay each violated 2 U.S.C. § 441a(a)(1)(A). *See* MUR 5026 (Zimmer)
14 (Commission found reason to believe that LLCs violated section 441b(a) as corporations and, in
15 the alternative, section 441a(a)(1) as partnerships, and that individuals violated section 441b(a)
16 as corporate officers of the LLCs).²⁹

17 Finally, there appear to be contributions made in the name of another whether the LLCs
18 were treated as corporations or as partnerships. *See* 2 U.S.C. § 441f. If the LLCs were treated as
19 corporations, then the LLCs made contributions in the names of the various individuals to whom
20 the contributions were attributed. If the LLCs were treated as partnerships, then the attributed

²⁹ At the moment, it does not appear that Nical Bybee, Tamra Bybee, Bodee Gay or Kim Gay made excessive contributions, because it does not appear that any of these individuals were members of either LLC, and if they were not then no portion of the LLC contributions could be attributed to them. However, because the investigation could conceivably produce evidence that they were members, we recommend that the Commission take no action at this time with respect to the allegation that they made excessive contributions.

1 partners made contributions in the names of the other individuals who are not partners. This
2 Office thus recommends that the Commission find reason to believe that Winterfox, LLC and
3 Winterhawk Enterprises, LLC each violated 2 U.S.C. § 441f.³⁰ In addition, the various attributed
4 individual contributors may have knowingly permitted their names to be used to effect the LLC
5 contributions on their behalf. *See* 2 U.S.C. § 441f. Therefore, this Office recommends that the
6 Commission find reason to believe that Evan Bybee, Nicaïl Bybee, Taige Bybee, Tamra Bybee,
7 Kara Davis, Brenn Bybee, Bodee Gay, Dennis Gay, Gina Gay, Kim Gay and Haley Gay violated
8 2 U.S.C. § 441f.³¹

9 Although the Committee did make inquiries regarding three of the four LLC contribution
10 checks, the Committee did not inquire as to the treatment of the LLCs as corporations or
11 partnerships, but rather appeared to have assumed that the LLCs were treated as corporations and
12 that checks drawn on corporate accounts could be attributed to individuals through the
13 mechanism of a drawing account. As noted above, most of the employees did not identify the
14 LLC as their employer. Thus, the Committee does not appear to have made "best efforts" to
15 determine the legality of the contributions. *See* 11 C.F.R. § 103.3(b)(1). This Office therefore
16 recommends that the Commission find reason to believe that John Swallow for Congress and
17 Stanley R. deWaal, as treasurer, violated 2 U.S.C. § 441b(a) for knowingly receiving corporate
18 contributions and, in the alternative, violated 2 U.S.C. § 441a(f) for knowingly receiving
19 excessive contributions. This Office also recommends that the Commission find reason to
20 believe that John Swallow for Congress and Stanley R. deWaal, as treasurer, violated 2 U.S.C.

³⁰ This Office is not recommending findings at this time that Winterfox or Winterhawk knowingly and willfully violated the Act, pending the proposed investigation of the circumstances of the LLC contributions.

³¹ This Office intends to investigate the LLC contributions to ascertain the LLCs' federal tax status as corporations or partnerships and to determine which individuals were members at the time of the contributions. Depending on the evidence developed, this Office may recommend not further pursuing the non-member conducts.

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§ 441f for knowingly accepting contributions made in the name of another. Finally, we recommend that the Commission find reason to believe that John Swallow for Congress and Stanley R. deWaal, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) for failing to report the receipt of contributions from the LLCs.

F. Additional Contributions

The complaint alleges that seven individuals with the last name "Facer" made excessive contributions to the Committee. The complaint listed each Facer as contributing \$2,000 to the Committee. In fact, the Committee disclosed the receipt of \$3,000 from each Facer, in each case \$1,000 designated for each of the convention, primary and general elections. Therefore, these contributions are on their face within the limits of 2 U.S.C. § 441a(a)(1)(A). The complaint alleges that two contributors, Britta Lynn Facer and Riley Todd Facer, were children through whom contributions were made. These contributions are discussed below, along with those from Tyson Facer and Brent Facer, which raise additional questions. The contributions from the three remaining Facer contributors, Corby Facer, Jillyn Facer and Rebecca Facer, are analyzed above in section II.A.³²

1. Alleged contributions in the names of children

In response to our invitation to respondents to voluntarily clarify their response, counsel provided the dates of birth of Britta Lynn Facer and Riley Todd Facer as [redacted] and [redacted] respectively. Thus, these two contributors were not minors at the time of their contributions during 2002. The available information does not suggest any other questions about

³² Each Facer contributor submitted a response to the complaint, dated December 5, 2002, asserting that they had followed "the regulations of the FEC" in contributing \$1,000 for each of the three elections involving John Swallow.

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1 these contributions.³³ Therefore, this Office recommends that the Commission find no reason to
2 believe that Britta Lynn Facer or Riley Todd Facer violated the Act, and find no reason to
3 believe that the Committee violated the Act in connection with contributions from either
4 individual.

5 Another of the Facer contributors alleged to have made excessive contributions, Tyson
6 Facer, appears to have made contributions that on their face were within the limits of 2 U.S.C.
7 § 441a(a)(1)(A), considering the Committee's participation in three elections. *See supra*.
8 However, although he was not alleged by the complaint to be a minor, the contributions
9 attributed to him raise questions. His first contribution was made by a \$1,000 check drawn on
10 the "Facer Family Living Trust" account and containing what appears to be the signature of
11 Brent Facer. The typed memo line reads "Tyson Facer." Committee first response, tab 19.³⁴
12 Tyson Facer's second and third contributions were made in the form of \$1,000 "official checks"
13 with Tyson Facer's name typed on the checks.³⁵ Committee first response, tab 19. The
14 Committee describes these official checks simply as "bear[ing] attribution to Tyson Facer." *Id.*
15 at page 6. Tyson Facer's occupation is disclosed by the Committee as "student," and his

³³ For example, the contributions of Britta Lynn Facer and Riley Todd Facer were made by checks imprinted with their names and addresses, in contrast to the Lichfield contributions, *supra*, made via official checks purchased by another person

³⁴ The Committee provided a copy of a letter its assistant treasurer sent to Tyson Facer, dated March 31, 2002, thanking him for the contribution and then stating:

However, your contribution appears to have been signed by someone other than the account holder on the check. The strict Federal Election Commission regulations prohibit such contributions in federal election campaigns. Therefore we need your signature that these funds are from your personal account. If this is the case, please sign and return this letter along with your original check...

The letter provides a field for Tyson Facer's signature and date. The completed fields contain the signature of Tyson Facer dated April 7, 2002. Committee second response.

³⁵ Unlike the official checks used to make the Lichfield contributions, *see supra*, the official checks used to make the Tyson Facer contributions do not identify a purchaser

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disclosed address is the same as Brent Facer and Jillyn Facer, possibly his parents.³⁶ In addition, Tyson Facer's contributions were made on the same date as the other Facer contributions, including those of Brent Facer, who signed the check for Tyson Facer's contribution drawn on the account of the family trust.³⁷ These circumstances raise questions as to whether Tyson Facer was a minor at the time of the contributions, *see* 11 C.F.R. § 110.1(i)(2), and whether he provided the funds used for his contributions made by official check. However, in light of the comparatively small amount of contributions made via official checks by Facer respondents - \$2,000 versus \$30,000 for the Lichfields, *see supra*, and in order to focus the Commission's resources on the larger activity in this matter, this Office does not recommend any findings regarding contributions made in the name of Tyson Facer.

Further, because Tyson Facer's contributions appear to be within the statutory limits, *see supra*, this Office recommends that the Commission find no reason to believe that Tyson Facer violated 2 U.S.C. § 441a(a)(1)(A), and find no reason to believe that the Committee violated 2 U.S.C. § 441a(f) in connection with contributions from Tyson Facer.

2. Partnership contributions

Finally, the contributions by Brent Facer raise questions. His first two \$1,000 contributions were made by checks drawn on the account of "BMF #1, Ltd." with "Brent Facer - Contribution" typed in the memo line; the checks appear to be signed by Mr. Facer. His third contribution, made by a check drawn on a different account and imprinted with the names "BMF #1, Ltd.," "Brent M. Facer" and "Jillyn P. Facer" also appears to be signed by Mr. Facer. The

³⁶ According to a public database, both Brent Facer and Jillyn Facer were born in 1950. The database contains no entry for Tyson Facer.

³⁷ Contributions by trusts may be permissible, subject to limitation, as a trust is a "person" defined at 2 U.S.C. § 431(11) whose contributions if not otherwise prohibited are subject to the limitations at section 441a(a)(1) *Cf* 11 C.F.R. § 9034.2(b) (matchable contributions regulations define "written instrument" to include a check written on a trust account representing or containing the contributor's personal funds)

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1 memo line reads "Brent Facer – Contribution" and an accompanying check register contains the
2 handwritten notation "Personal fund" [sic]. Committee first response, tab 13. The Committee
3 provided a copy of a letter its treasurer sent to Brent Facer, dated June 20, 2002, after the second
4 BMF #1 check. The letter thanks Mr. Facer for his contribution and then states:

5 The strict Federal Election Commission regulations prohibit making contributions from a
6 non-personal account to a federal election campaign. We must refund this money to you
7 within thirty (30) days unless you can establish in writing that the contribution came from
8 personal funds of a corporate drawing account, such as a draw against salary, wages,
9 dividends, etc. Please confirm that such was indeed the case with this check by signing
10 below....

11
12 The letter provided fields for Brent Facer's signature, date, occupation and employer. The
13 completed fields contain Mr. Facer's signature dated July 3, 2002, his occupation as "partner"
14 and his employer as BMF #1, Ltd. Committee first response, tab 13.

15 Public records identify BMF #1, Ltd. ("BMF #1") as an active limited partnership
16 organized in Utah, with Brent Facer as the registered agent and BMF Management, LLC ("BMF
17 Management") as general partner. Public records do not identify any limited partners. BMF
18 Management, in turn is shown to have two members, Brent Facer and Jillyn Facer. Thus, the
19 two contribution checks from BMF #1 constitute contributions from BMF #1 as well as from one
20 or more attributed partners.³⁸ See 11 C.F.R. § 110.1(e). Here, the contributions are attributed
21 entirely to Brent Facer, which would be permissible if Mr. Facer were a partner of BMF #1 and
22 this attribution was the result of an agreement of the partners, *and* only his profits were reduced
23 as a result of the contributions. See *id.* If, on the other hand, the BMF #1 contributions were
24 made at least in part with profits of general partner BMF Management, the BMF #1 contributions

³⁸ The third contribution check, imprinted with the name of the partnership as well as the names Brent Facer and Jillyn Facer, although noted as personal funds, could have included funds commingled between the partnership and Mr. Facer. In any event, this Office's analysis of the BMF #1 contributions would not change if this third contribution were considered to be made with partnership funds.

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1 would have to be attributed at least in part to BMF Management. This arrangement would raise
2 the issue of whether this LLC is acting as a partnership or as a corporation, which is determined
3 by whether it has elected federal tax treatment as a corporation. *See* 11 C.F.R. § 110.1(g)(2). If
4 so, attribution of part of the BMF #1 contribution to BMF Management would constitute an
5 impermissible corporate contribution. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 110.1(g)(3).³⁹ If
6 BMF Management is instead acting as a partnership, attribution of part of the BMF #1
7 contribution to BMF Management would require further attribution of that portion to one or
8 more of the BMF Management members, one of whom is Brent Facer.⁴⁰

9 The Brent Facer contributions thus present a number of possibilities, some of which may
10 involve violations of the Act and some of which may not.⁴¹ Given the small amount of
11 contributions at issue, it is not worth the resources necessary to investigate. Therefore, this
12 Office recommends that the Commission dismiss the complaint and close the file with respect to
13 Brent Facer. Further, we recommend that the Commission dismiss the complaint with respect to
14 the Committee in connection with the alleged receipt of excessive contributions from Brent
15 Facer. Nevertheless, the Committee did fail to disclose the receipt of contributions from
16 BMF #1, and so we recommend that the Commission find reason to believe that John Swallow
17 for Congress and Stanley R. deWaal, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

³⁹ The mere existence of BMF Management as a corporate partner of BMF #1 would not by itself necessarily taint a contribution by BMF #1, which could be attributed by agreement of the partners to non-corporate partners. *See* Advisory Opinion 1980-132.

⁴⁰ In response to the second BMF #1 contribution, as noted above, the Committee sent a letter asking Brent Facer whether the contribution came from "personal funds of a corporate drawing account, such as a draw against salary, wages, dividends, etc." BMF #1, however, is a partnership, not a corporation. The Commission has not recognized as permissible contributions made from partnership drawing accounts. *Cf.* nonrepayable corporate drawing accounts of corporate employees, discussed *supra*.

⁴¹ For example, BMF #1 has not exceeded the contribution limit of \$1,000 per election, in contrast with Winterfox and Winterhawk. *See supra*, 2 U S C § 441a(a)(1)(A)

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III. INVESTIGATION

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IV. RECOMMENDATIONS

1. Find no reason to believe Dell Allen, Roger Barrus, W.R. Bradley, Danica M. Campbell, Lavar Christensen, Fonda L. Eastman, Michael Ellis, Monica Ellis, Corby Facer, Jillyn Facer, Rebecca Facer, James R. Fraser, Sharon E. Fraser, John L. Harmer, Victor Iverson, Larry H. Miller, Bradley D. Pelo, Melody A. Pelo, Mandi Robinson, Timothy V. Stay or Robert Whitman violated 2 U.S.C. § 441a(a)(1)(A), and close the file as to these respondents.
2. Find no reason to believe that John Swallow for Congress and Stanley R. deWaal, as treasurer, violated 2 U.S.C. § 441a(f) in connection with the contributions from contributors listed in recommendation number one.
3. Dismiss the complaint with respect to Donna Swallow and close the file as to this respondent.
4. Dismiss the complaint with respect to John Swallow for Congress and Stanley R. deWaal, as treasurer, in connection with the contributions from Donna Swallow.
5. Dismiss the complaint with respect to Charlotte Jonas and W. James Jonas and close the file as to these respondents.
6. Dismiss the complaint with respect to John Swallow for Congress and Stanley R. deWaal, as treasurer, in connection with the contributions from Charlotte P. Jonas and W. James Jonas.
7. Find reason to believe that Robert B. Lichfield knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3) and 441f.
8. Find reason to believe that Lenae Lichfield, Loni Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield each violated 2 U.S.C. § 441f.
9. Take no action at this time with respect to Lenae Lichfield, Loni Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield regarding the allegation that they violated 2 U.S.C. § 441a(a)(1)(A).
10. Take no action at this time with respect to John Swallow for Congress and Stanley R. deWaal, as treasurer, in connection with the contributions from Robert B. Lichfield, Lenae Lichfield, Loni Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield.
11. Find reason to believe that Winterfox, LLC and Winterhawk Enterprises, LLC each violated 2 U.S.C. §§ 441b(a), 441a(a)(1)(A) and 441f.

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12. Find reason to believe that Evan Bybee and Dennis Gay violated 2 U.S.C. § 441b(a).
13. Find reason to believe that Evan Bybee, Taige Bybee, Dennis Gay and Gina Gay each violated 2 U.S.C. § 441a(a)(1)(A).
14. Take no action at this time with respect to Nicaïl Bybee, Tamra Bybee, Bodee Gay or Kim Gay regarding the allegation that they violated 2 U.S.C. § 441a(a)(1)(A).
15. Find reason to believe that Evan Bybee, Nicaïl Bybee, Taige Bybee, Tamra Bybee, Kara Davis, Brenn Bybee, Bodee Gay, Dennis Gay, Gina Gay, Kim Gay and Haley Gay violated 2 U.S.C. § 441f.
16. Find reason to believe that John Swallow for Congress and Stanley R. deWaal, as treasurer, violated 2 U.S.C. §§ 441b(a), 441a(f), 441f and 434(b)(3)(A) relating to the Winterfox, LLC and Winterhawk Enterprises, LLC contributions.
17. Find no reason to believe that Britta Lynn Facer or Riley Todd Facer violated the Act, and close the file as to these respondents.
18. Find no reason to believe that John Swallow for Congress and Stanley R. deWaal, as treasurer, violated the Act in connection with the contributions from Britta Lynn Facer or Riley Todd Facer.
19. Find no reason to believe that Tyson Facer violated 2 U.S.C. § 441a(a)(1)(A), and close the file as to this respondent.
20. Find no reason to believe that John Swallow for Congress and Stanley R. deWaal, as treasurer, violated 2 U.S.C. § 441a(f) in connection with contributions from Tyson Facer.
21. Dismiss the complaint with respect to Brent Facer and close the file as to this respondent.
22. Dismiss the complaint with respect to John Swallow for Congress and Stanley R. deWaal, as treasurer, in connection with the alleged receipt of excessive contributions from Brent Facer.
23. Find reason to believe that John Swallow for Congress and Stanley R. deWaal, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) relating to the BMF #1, Ltd. contributions.
24. Approve the attached Factual and Legal Analyses.
- 25.

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26. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Date

6/18/04

BY:

Lawrence L. Calvert Jr.
Deputy Associate General Counsel
For Enforcement

Cynthia E. Tompkins by MA
Cynthia E. Tompkins
Assistant General Counsel

Mark Allen
Mark Allen
Attorney

Attachments:
Factual and Legal Analyses

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